



Paper No. 6

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OFFICE OF PETITIONS

In re Application of	:	DECISION REFUSING STATUS
Shroot et al.	:	UNDER 37 CFR 1.47(a)
Application No. 10/071,051	:	AND DECISION
Filed: 8 February, 2002	:	UNDER 37 CFR 1.28(c)
Attorney's Docket No. P05380USO	:	

This is in response to the petition under 37 CFR 1.47(a) filed on 8 February, 2002, and the deficiency fee payment filed pursuant to 37 CFR 1.28(c) on 25 March, 2002.

The petition under 37 CFR 1.47(a) is **DISMISSED**.

The deficiency fee payment under 37 CFR 1.28(c) is **accepted**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.
Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

PETITION UNDER 37 CFR 1.47(a)

The above-identified application was filed on 8 February, 2002, with an executed oath or declaration naming Braham Shroot, Lawton A. Seal, James R. Hunt, Jonathon Sterling, Kathy Bolsen, and Penny L. Sitka as joint inventors and signed by all inventors except joint inventor Sterling on behalf of themselves and joint inventor Sterling. A petition under 37 CFR 1.47(a) was also

filed with the application papers deposited on 8 February, 2002. In response, on 6 March, 2002, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, requiring the signature of joint inventor Sterling on the declaration and a surcharge for its late filing. A two (2) month period for reply was set.

Petitioners assert that Sterling cannot be found or reached to sign the declaration for the present patent application.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee;
- (4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and
- (5) a statement of the last known address of the non-signing inventor.

The petition lacks item (1). In regards to item (1), petitioners have not submitted sufficient proof that diligent efforts have been made to locate the non-signing inventor.¹ Petitioners should submit proof that a copy of the application (specification including claims, drawings, if any, and the declaration) was sent or given to the non-signing inventor for review.² Petitioners may provide proof by providing a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

Petitioners should also provide proof that the inventor refuses to sign the declaration. If there is a written refusal, petitioners should provide a copy of the written refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

¹MPEP 409.03(d).

²Id.

If the application is returned as undeliverable, petitioners should submit a copy of an envelope showing that a letter sent to the last known address of the non-signing inventor was returned as undeliverable by the post office. Details of the efforts made to locate the non-signing inventor should be set forth in an affidavit or declaration of facts by a person having first hand knowledge of the details.

DECISION UNDER 37 CFR 1.28(c)

37 CFR 1.28(c) states, "The deficiency is based on the amount of the fee, for other than a small entity, in effect at the time the deficiency is paid in full."

The current fees due for a large entity are \$740.00. On 8 February, 2002, \$370.00 was paid. Therefore, a deficiency of **\$370.00** is due. Petitioner has submitted a check in the amount of \$370.00. However, petitioner is ultimately responsible for ensuring that the correct fee is paid and MUST notify the Office if the above calculations are incorrect.

It is also noted that on 14 May, 2002, petitioners submitted the late filing fee or oath or declaration surcharge in the small entity amount of \$65.00. In light of the loss of small entity status, a deficiency of **\$65.00** is due and will be charged to counsel's deposit account, No. 26-0084 pursuant, to the authorization provided in the petition under 37 CFR 1.47(a) filed on 8 February, 2002.

Small entity status will no longer apply.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 Box DAC
 Washington, D.C. 20231

By FAX: (703) 308-6916
 Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
 2201 S. Clark Place
 Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.



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for Patent Examination Policy